

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 BRENDYN GAYLER,)

Case No. 2:14-cv-00769-APG-CWH

5 Plaintiff,)

6 v.)

7 HIGH DESERT STATE PRISON, et al,)

ORDER

8 Defendants.)
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10 Presently before the Court is pro se Movant Charles Wirth's motion to join as plaintiff (ECF
11 No. 103), filed on April 17, 2017. Defendants filed a response (ECF No. 104) on May 3, 2017.
12 Wirth has not filed a reply.

13 Wirth seeks leave of the Court to join this case as a co-Plaintiff, arguing that his case has the
14 same basic facts as Plaintiff Brendyn Gayler's claim against Defendants, and that to join his claims
15 would be in the interest of justice and efficiency. Defendants oppose the motion, arguing that
16 Plaintiff's action is already two years old, that Wirth's claim is devoid of any factual allegations and
17 would therefore not survive screening, that there are significant factual differences between
18 Plaintiff's and Wirth's claims, and that the logistical difficulties of Wirth, an incarcerated pro se
19 party, proceeding in a claim along with Plaintiff, a represented party, while both are housed at
20 separate facilities, would overcome any benefits to joining them as parties.

21 Rule 20(a) of the Federal Rules of Civil Procedure allows for the joinder of new parties to an
22 existing case. However, two specific requirements must be met: "(1) a right to relief must be
23 asserted by, or against, each plaintiff or defendant relating to or arising out of the same transaction or
24 occurrence or series of transactions or occurrences; and (2) some question of law or fact common to
25 all parties must arise in the action." *See Desert Empire Bank v. Ins. Co. of N. Am.*, 623 F.2d 1371,
26 1375 (9th Cir. 1980). Further, "a trial court must also examine the other relevant factors in a case in
27 order to determine whether the permissive joinder of a party will comport with the principles of
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1 fundamental fairness." *Id.* These factors include: "the possible prejudice that may result to any of the
2 parties in the litigation, the delay of the moving party in seeking an amendment to his pleadings, the
3 motive that the moving party has in seeking such amendment, the closeness of the relationship
4 between the new and the old parties, the effect of an amendment on the court's jurisdiction, and the
5 new party's notice of the pending action." *Id.* A court may deny a motion for permissive joinder if it
6 finds that it would be inconsistent with the principles of fundamental fairness, or would result in
7 prejudice to a party. *Coleman v. Quaker Oats Co.*, 232 F.3d 1271, 1296 (9th Cir. 2000).

8 Here, Wirth asserts that his claim is "exactly like" Plaintiff's, but the Court finds significant
9 differences in their situations. Both Plaintiff and Wirth claim that they have been unfairly denied
10 certain benefits and privileges during their incarceration because they have been held in segregation.
11 However, Plaintiff has been held only in voluntary protective segregation at High Desert State
12 Prison. In contrast, Wirth has been held in both voluntary protective segregation and involuntary
13 administrative segregation, at times at High Desert State Prison, but also while at Lovelock
14 Correctional Center. Determining what harms Plaintiff and Wirth have suffered, if any, will
15 therefore require significantly different avenues of investigation.

16 Moreover, Wirth's status as an incarcerated pro se party would create significant burdens on
17 both Plaintiff and Defendants, since Wirth would be unable to participate in the litigation in the same
18 manner or pace as the represented parties. As this case has been in progress for more than two years,
19 it is likely that adding Wirth as a plaintiff would substantially delay the final outcome, creating
20 prejudice for both Plaintiff and Defendants. The Court therefore finds significant prejudice would
21 accrue to all current parties if Wirth were joined as a plaintiff to this action. The Court notes that
22 Wirth may pursue his claim against Defendants on an individual basis, if he so chooses, but that he
23 will not be included as a party to the present case brought by Plaintiff Brandyn Gayler.

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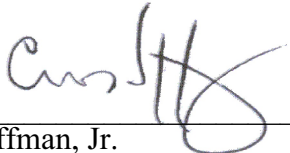
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1 IT IS THEREFORE ORDERED that Movant Worth's motion to join as plaintiff (ECF No.
2 103) is DENIED.

3 IT IS FURTHER ORDERED that in light of the Court's decision on the motion to join as
4 plaintiff, Movant Wirth's application to proceed *in forma pauperis* (ECF No. 103-2) is DENIED as
5 moot.

6 DATED: May 19, 2017.

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9 C.W. Hoffman, Jr.
United States Magistrate Judge

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